

MAR 10 2008

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FRANCISCO IBARRA-VALDEZ,

Defendant - Appellant.

No. 05-30614

D.C. No. CR-03-02133-RHW

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of Washington
Robert H. Whaley, Chief Judge, Presiding

Submitted February 26, 2008^{**}

Before: BEEZER, FERNANDEZ, and McKEOWN, Circuit Judges.

Following a limited remand pursuant to *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc), Francisco Ibarra-Valdez appeals from the district

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

court's order concluding that it would not have imposed a materially different sentence had it known that the Sentencing Guidelines were advisory. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Ibarra-Valdez contends that the district court erred at the original sentencing hearing by relying on hearsay evidence regarding a particular methamphetamine transaction to select his sentence within the Sentencing Guidelines range.

However, we conclude that the hearsay was accompanied by minimal indicia of reliability and there was sufficient evidence to support the district court's decision. *See United States v. Ingham*, 486 F.3d 1068, 1076-78 (9th Cir. 2007).

Ibarra-Valdez also contends that the district court erred on remand when it did not allow him to present new evidence, did not hold a new sentencing hearing, and did not adequately explain its decision to confirm the sentence. These contentions are foreclosed. *See United States v. Combs*, 470 F.3d 1294 (9th Cir. 2006); *United States v. Ameline*, 409 F.3d 1073, 1085 (9th Cir. 2005) (en banc).

AFFIRMED.